

2016

## On The Effects and History of Stand-Your-Ground Laws

E. Dimitri Hasandras

*American University Washington College of Law*

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/clp>



Part of the [Criminal Law Commons](#), [Legal History Commons](#), [Second Amendment Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Hasandras, E. Dimitri (2016) "On The Effects and History of Stand-Your-Ground Laws," *Criminal Law Practitioner*. Vol. 3 : Iss. 3 , Article 1.

Available at: <https://digitalcommons.wcl.american.edu/clp/vol3/iss3/1>

This Article is brought to you for free and open access by Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Criminal Law Practitioner by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact [kclay@wcl.american.edu](mailto:kclay@wcl.american.edu).



# ON THE EFFECTS AND HISTORY OF STAND-YOUR-GROUND LAWS

*E. Dimitri Hasandras*

August 29, 2016

## ABSTRACT

Stand-your-ground laws have achieved a very polarizing status in recent years. Unfortunately, the arguments made by parties on both sides of the issue are usually heavily politicized and backed with little statistical evidence, which is often narrowly-focused and selectively chosen to support the author's position. This paper seeks to ascertain 1) the true effects of stand-your-ground laws on crime rates, and 2) whether there is a historical precedence for stand-your-ground laws. By looking at official data reported by state police departments, this paper will compare the trends in violent crime between states that have adopted stand-your-ground laws and those that maintain a duty to retreat. This paper concludes that 1) there is a strong common law historical precedent for stand-your-ground laws, and 2) the statistical data analyzed indicates that stand-your-ground laws have – contrary to what many believe – not increased crime rates, and have in fact served to accelerate the decline in violent crime rates.

## TABLE OF CONTENTS

1. INTRODUCTION .....	6
2. AN INTRODUCTION TO STAND-YOUR-GROUND LAWS .....	6
3. HISTORY OF STAND-YOUR-GROUND LAWS IN THE UNITED STATES .....	8
A. Early Positive Perception of Stand-Your-Ground.....	8
B. 20th Century Reversal .....	8
C. Stand-Your-Ground Laws Slowly Re-established .....	9
4. COMPARISON OF DIFFERENT TYPES OF STAND-YOUR-GROUND-LAWS.....	10
A. Florida.....	10
B. Texas.....	11
C. Pennsylvania.....	11
5. EFFECTS OF STAND-YOUR-GROUND LAWS ON CRIME RATES .....	11
A. Florida.....	12
B. Texas.....	13
C. Pennsylvania.....	13
D. California.....	14
E. New York.....	15
F. New Jersey.....	15
6. ADDRESSING DISCREPANCIES WITH OTHER REPORTS AND STUDIES .....	16
7. CONCLUSION .....	18



## ON THE HISTORY AND EFFECTS OF STAND-YOUR-GROUND LAWS

### 1. Introduction

Stand-your-ground laws have achieved a very polarizing status in recent years. Unfortunately, discourse on stand-your-ground laws has been overwhelmed with impassioned perceptions that are tainted by established political narratives. Much is said in favor of stand-your-ground laws and in opposition to them, but often without much substance to support the assertions of either position. Unfortunately, the polarization and politicization of the discourse on this subject have served to make unbiased research and analysis of the effects and history of stand-your-ground laws hard to find. Furthermore, due to the fact that stand-your-ground laws have only become widely prevalent in the last decade, the statistics necessary to analyze their effects are often limited.

Critics (such as the organization Mayors Against Illegal Guns) argue that stand-your-ground laws (or “shoot first” laws, as they like to call them) constitute an unprecedented expansion of the legal concept of self-defense that effectively provides people with a carte blanche to use deadly force in response to any trivial conflict, without the fear of legal repercussions.<sup>1</sup> Furthermore, the critics claim that stand-your-ground laws have had a disproportionate effect on disadvantaged people and are used by the white population to victimize minorities.<sup>2</sup>

On the other hand, supporters argue that stand-your-ground laws merely protect a

person’s inalienable right to self-defense.<sup>3</sup> They claim that stand-your-ground laws do not legitimize murder but rather merely ensure that a citizen will be legally permitted to use the force reasonably necessary to protect himself, his family or his property, in the face of an imminent threat to which law enforcement would be unable to respond to in time.<sup>4</sup> Furthermore, supporters of stand-your-ground laws claim that they reduce crime rates because they create a strong deterrent effect.<sup>5</sup>

This paper will attempt to answer important questions relating to stand-your-ground laws. Namely, 1) what their true effects on crime rates are; and 2) whether there is a historical precedence for stand-your-ground laws. This paper will attempt to answer these questions by engaging in a review of the history of stand-your-ground laws in the U.S., providing a comparison of the different ways that stand-your-ground-laws have been structured, and performing a comparative analysis of their effects in various states, including Florida, Texas, and Pennsylvania. This paper will conclude that 1) there is a long-standing historical precedence for stand-your-ground laws, and 2) according to currently available crime statistics, stand-your-ground laws have generally had a negative effect on crime rates.

### 2. An Introduction to Stand-Your-Ground laws

Critics of stand-your-ground laws argue that they essentially do nothing less than provide a legal means for people to commit homi-

<sup>1</sup> “*Stand Your Ground*” Laws and Their Effect on Violent Crime and the Criminal Justice System, MAYORS AGAINST ILLEGAL GUNS (2013), [https://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/ShootFirst\\_v4.pdf](https://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/ShootFirst_v4.pdf).

<sup>2</sup> *Id.*

<https://digitalcommons.wcl.american.edu/clp/vol3/iss3/1>

<sup>3</sup> Chris Cox, *Self Defense is a Human Right*, U.S. NEWS & WORLD REPORT LP (Aug. 9, 2013), <http://www.usnews.com/opinion/articles/2013/08/09/stand-your-ground-trayvon-martin-and-fundamental-human-rights>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*



cide.<sup>6</sup> Critics claim that stand-your-ground laws enable people to take the law into their own hands, and act as judge, jury, and executioner, without having to follow any legally defined procedures (such as the duty to retreat) before being permitted to use deadly force in self-defense.<sup>7</sup> In effect, the critics claim that stand-your-ground laws serve to promote wanton vigilantism, the likes of which has not been seen in the U.S. since the time of the Wild West.<sup>8</sup> However, this description, is far from the truth. On the contrary, stand-your-ground laws merely eliminate the duty to retreat and enable a person to use force in self-defense in response to a perceived threat of serious harm, so long as the elements of imminence, necessity, proportionality and intention are present.<sup>9</sup>

Stand-your-ground laws permit a person to respond to an unprovoked attack by force in an effort to defend himself.<sup>10</sup> Stand-your-ground laws are closely related to a long-standing principle of English and American common law known as the castle doctrine.<sup>11</sup> Due to the historical importance of the privacy of an individual's home, the castle doctrine permits a person to respond with force to an unlawful entry onto his property.<sup>12</sup> As Black-

stone observed in his *Commentaries on the Laws of England*, “[a]nd the law of England has so particular and tender a regard to the immunity of a man’s house, that it stiles it his castle, and will never suffer it to be violated with impunity.”<sup>13</sup> Stand-your-ground laws take that principle and extend it to areas beyond the home, allowing a person to respond to any unprovoked attack with force.<sup>14</sup> Stand-your-ground laws are in contrast to “duty to retreat” laws, which require that a person retreat as far as he can (until he reaches a barrier such as a wall which stops him from retreating any further), before he may use force to respond to an unprovoked attack.<sup>15</sup>

Even though stand-your-ground laws remove the duty to retreat, they nevertheless impose certain criteria that must be met before a person may legally use force in self-defense. These include imminence, necessity, proportionality, and intention.<sup>16</sup> Imminence requires that a serious harm is about to occur to the actor instantly, and not at a future time.<sup>17</sup> One may not exercise self-defense in response to a threat of future injury.<sup>18</sup> Similarly, the use of force in self-defense is also not permitted if the threat of injury has passed.<sup>19</sup> Necessity requires that the use of force in self-defense be the only means of averting an imminent threat.<sup>20</sup> Force may not be used if there are different means of averting the threat of injury.<sup>21</sup> Proportionality requires that the force used in self-defense

<sup>6</sup> MAYORS AGAINST ILLEGAL GUNS, *supra* note 1.

<sup>7</sup> *Id.*

<sup>8</sup> Benjamin Todd Jealous, *The Law of the Wild West*, U.S. NEWS & WORLD REPORT LP (Aug. 9, 2013) <http://www.usnews.com/opinion/articles/2013/08/09/stand-your-ground-laws-lead-to-unjustified-killings-like-tray-von-martin>.

<sup>9</sup> Joshua Prince & Allen Thompson, *The Unalienable Right to Stand Your Ground*, 27 ST. THOMAS L. REV. 32, 33-36 (2015).

<sup>10</sup> *Id.* at 43.

<sup>11</sup> Christine Catalfamo, *Stand Your Ground: Florida’s Castle Doctrine for the Twenty-First Century*, 4 RUTGERS J. L. & PUB. POL’Y 504, 504-05 (2007); J. P. Neyland, *A Man’s Car Is His Castle: The Expansion of Texas’ “Castle Doctrine” Eliminating the Duty to Retreat in Areas Outside the Home*, 60 BAYLOR L. REV. 719, 720-27 (2008).

<sup>12</sup> 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 223 (16th ed. 1825).

<sup>13</sup> *Id.*

<sup>14</sup> J.P. Neyland, *A Man’s Car Is His Castle: The Expansion of Texas’ “Castle Doctrine” Eliminating the Duty to Retreat in Areas Outside the Home*, 60 BAYLOR L. REV. 719, 720 (Spring 2008).

<sup>15</sup> Prince & Thompson, *supra* note 9.

<sup>16</sup> GEORGE P. FLETCHER & STEVE SHEPPARD, AMERICAN LAW IN A GLOBAL CONTEXT 568-84 (2005).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*



is proportional to the gravity of the threatened injury.<sup>22</sup> For instance, it would be appropriate to use deadly force in defense against a threat of serious bodily harm or death, but it might not be appropriate to use deadly force in response to a theft.<sup>23</sup> Finally, intention requires that self-defense be the intent of the use of force in response to an attack.<sup>24</sup> A person may not use force for purposes other than self-defense.<sup>25</sup> For a person to claim self-defense, he must be aware of a present threat, and use force with the specific purpose of neutralizing that threat.<sup>26</sup>

### 3. History of Stand-Your-Ground laws in the United States

Many states in the U.S. still maintain a duty to retreat.<sup>27</sup> However, the right to stand-your-ground is historically recognized in both English and American common law.<sup>28</sup> Blackstone's *Commentaries on the Laws of England* states, "In cases of justifiable homicide, a man is not obliged to retreat in the first instance, and he may pursue his adversary until he has secured himself from all danger, and if he kill him in so doing, it is still justifiable self-defense."<sup>29</sup> However, the right to stand-your-ground has been inconsistently protected in England and the U.S. over recent centuries.<sup>30</sup>

#### A. Early Positive Perception of Stand-Your-Ground

Stand-your-ground laws have had a long and varying history in the United States. The right to self-defense was considered an implied inalienable right stemming from natural law at the time of our nation's founding.<sup>31</sup> In an effort to strengthen and clarify the right to stand-your-ground, in 1895 the Supreme Court in *Beard v. United States* held that

"[t]he defendant was where he had the right to be, when the deceased advanced upon him in a threatening manner, and with a deadly weapon; and if the accused did not provoke the assault, and had at the time reasonable grounds to believe, and in good faith believed, that the deceased intended to take his life, or do him great bodily harm, he was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground, and meet any attack made upon him with a deadly weapon, in such way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life, or to protect himself from great bodily injury."<sup>32</sup>

#### B. 20th Century Reversal

In the early 20th century, several state courts began to severely restrict the right of self-defense by recognizing a duty to retreat. For example, in 1916 the New Jersey Supreme Court in *State v. DiMara* stated, "how can it truly be said that no means of self-protection other than the killing of his adversary existed when it is shown that a safe way of retreat was open to him and that by taking advantage of

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *States That Have Stand Your Ground Laws*, THOMPSON REUTERS (2016), <http://criminal.findlaw.com/criminal-law-basics/states-that-have-stand-your-ground-laws.html>

<sup>28</sup> Joshua Prince & Allen Thompson, *The Unalienable Right to Stand Your Ground*, 27 St. Thomas L. Rev. 32, 36-46 (2015); WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND VOL. 4, 181 n.8 (16TH ED. 1825).

<sup>29</sup> WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND VOL. 4, 181 n.8 (16TH ED. 1825)

<sup>30</sup> Prince & Thompson, *supra* note 9, at 36-46.

<sup>31</sup> *Id.* at 36-44.

<sup>32</sup> *Beard v. U.S.*, 158 U.S. 550, 564 (1895).



it he could have avoided the threatened danger to life or limb?”<sup>33</sup> Similarly, in 1917 the Supreme Court of Pennsylvania in *Commonwealth v. Lapriesta* held, “[k]illing is the last resort, and, if there were any other way, it was the duty of the defendant to take that way.”<sup>34</sup> This principle was further extended in 1929 by the Supreme Judicial Court of Massachusetts’ holding in *Commonwealth v. Trippi* where the defendant was correctly found guilty because there was “an entire absence of evidence that the defendant had by any overt act or words abandoned his attempt to escape or had given the deceased any reasonable ground to believe that he (the defendant) intended to abandon his attempt to escape, or had exhausted all reasonable means of declining combat.”<sup>35</sup> Many other states soon followed suit in recognizing a duty to retreat. By the 1950s almost no state recognized a right to stand-your-ground.

It is important to note that certain states, such as Washington, never rejected the right to stand-your-ground. There are cases from Washington State, dating back to the late 1800s that recognized the right to stand-your-ground.<sup>36</sup> For instance, in 1896, in the case of *State v. Cushing*, the Supreme Court of Washington held that a jury instruction stating that if “the defendant at the time had reasonable grounds to believe...that the deceased intended to take his life...the defendant was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground,” constituted a “correct statement of the law.”<sup>37</sup>

This principle was later reaffirmed in 1917, in the case of *State v. Meyer*,<sup>38</sup> where the Supreme Court of Washington explicitly rejected the duty to retreat and recognized the “more reasonable” right to stand-your-ground.<sup>39</sup> Washington’s stand-your-ground law has remained in effect to this day, and currently, even permits defendants who succeed in self-defense claims to recover reasonable reimbursement for litigation costs and wages lost during the litigation.<sup>40</sup>

### *C. Stand-Your-Ground Laws Slowly Re-established*

In the later part of the 20th century, the tide began to shift. Virginia was one of the first states to re-establish a right to stand-your-ground. In 1958, in the case of *Bailey v. Commonwealth*, the Supreme Court of Appeals of Virginia held that, “[t]hus, the defendant being without fault, when attacked by Pittman, had the right to stand his ground and kill his as-

<sup>38</sup> *State v. Meyer*, 164 P.2d 926, 928 (Wash. 1917).

<sup>39</sup> In *State v. Cushing*, the Supreme Court of Washington very eloquently and clearly explained that, “the ancient doctrine of the common law that the right of self-defense did not arise until every effort to escape had been resorted to, even to the point of retreating until an impassable barrier was reached, has been supplanted in many of the American states, including the state of Washington, by the more reasonable doctrine and the one more in keeping with the dictates of human nature to the effect that, when one is feloniously assaulted in a place where he has the right to be and is placed in danger, either real or apparent, of losing his life or of suffering great bodily harm at the hands of his assailant, he is not required to retreat or to endeavor to escape, but may stand his ground and repel force with force, even to taking the life of his assailant if necessary or in good reason apparently necessary for the preservation of his own life or to protect himself from great bodily harm.” See *State v. Cushing*, 45 P.2d 145, 146 (Wash. 1896).

<sup>40</sup> *State v. Villanueva*, 311 P.3d 79, 81 (Wash. 2013); Kirk Johnson, *Court Rules on ‘Stand Your Ground’ Costs*, THE NEW YORK TIMES COMPANY (Oct. 17, 2013), <http://www.nytimes.com/2013/10/18/us/court-rules-on-stand-your-ground-costs.html>.

<sup>33</sup> *State v. DiMara*, 97 A. 248, 248-249 (NJ 1916).

<sup>34</sup> *Commonwealth v. Lapriesta*, 101 A. 637, 637 (PA 1917).

<sup>35</sup> *Commonwealth v. Trippi*, 167 N.E. 354, 356-57 (MA 1929).

<sup>36</sup> See e.g. *State v. Carter*, 45 P.2d 745, 746 (Wash. 1896); *State v. McCann*, 47 P.2d 443, 448 (Wash. 1896); see also *White v. Territory*, 3 Wash. Terr. 397, 406 (1888).

<sup>37</sup> *State v. Cushing*, 45 P.2d 145, 146 (Wash. 1896).



sailant if he reasonably apprehended death or great bodily harm to himself.”<sup>41</sup>

A few decades later, in the case of *Foote v. Commonwealth*, the Court of Appeals of Virginia provided a more detailed description of the right to stand-your-ground, and explained that the right is only available for a person who is completely without fault,

“[i]n Virginia, homicide (or attempted homicide) in self-defense is classified either as justifiable or excusable. Justifiable self-defense arises when the defendant is completely without fault. In such a case, the defendant need not retreat but is permitted to stand his ground and repel the attack by force, including deadly force, if it is necessary. Excusable self-defense arises when the defendant, who was at some fault in precipitating the difficulty, abandons the fight and retreats as far as he safely can before he attempts to repel the attack.”<sup>42</sup>

Furthermore, the Court of Appeals of Virginia clarified that an initial attempt to flee does not relinquish the right-to-stand-your-ground.<sup>43</sup>

In 2005, Florida became the first state to adopt a stand-your-ground law via statute.<sup>44</sup> Many states soon followed suit, including Texas in 2007.<sup>45</sup> Currently, at least 25 states have stand-your-ground laws.<sup>46</sup> Alaska is the most recent state to enter that group, having enacted its stand-your-ground statute in 2013.<sup>47</sup>

#### 4. Comparison of Different Types of Stand-Your-Ground-Laws

Although stand-your-ground laws generally serve the same function – to eliminate the duty to retreat – different jurisdictions have structured their stand-your-ground laws in different ways. This section will provide a brief comparison of some of the common ways that stand-your-ground laws have been structured, in a selection of U.S. states, and will identify any key elements that differentiate them.

Specifically, this section will provide an overview of how some states establish presumptions, where a person’s choice to stand his ground and use force in self-defense is presumed to be reasonable under certain particular sets of circumstances such as the location of the incident, or the specific type of criminal activity that the assailant was engaged in at the time of the incident.

##### A. Florida

Florida, for example, which maintains a right to stand-your-ground both in the home and in public areas, nevertheless treats the use of force in self-defense slightly differently when it occurs inside the home. The Florida statute creates a “presumption of fear,” that automatically renders the use of force in self-defense reasonable.<sup>48</sup> Specifically, any person who is attacked in his home by a person who had broken in is “presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another.”<sup>49</sup>

<sup>41</sup> *Bailey v. Commonwealth*, 104 S.E.2d 28, 32 (Va. 1958).

<sup>42</sup> *Foote v. Commonwealth*, 396 S.E.2d 851, 855 (Va. 1990) (citations omitted).

<sup>43</sup> *Id.* at 856.

<sup>44</sup> FLA. STAT. ANN. § 776.012 (West 2014).

<sup>45</sup> TEX. PENAL CODE ANN. § 9.31 (West 2007).

<sup>46</sup> THOMPSON REUTERS, *supra* note 26.

<sup>47</sup> ALASKA STAT. ANN. § 11.81.335 (West 2013).

<sup>48</sup> FLA. STA. ANN. § 776.013 (West 2005).

<sup>49</sup> *Id.*



### *B. Texas*

The Texas stand-your-ground statute maintains a presumption of reasonableness similar to the Florida statute. However, the Texas statute does not merely apply the presumption of reasonableness in instances of a home break-in.<sup>50</sup> It also applies the presumption to cases when the actor “knew or had reason to believe that the person against whom the force was used...was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.”<sup>51</sup> As such, Texas’s stand-your-ground statute is one of the broadest because the presumption of reasonableness applies in nearly all potential circumstances.

### *C. Pennsylvania*

Pennsylvania has adopted a stand-your-ground law that is quite peculiar in structure and is surprisingly different from those adopted by Florida and Texas. Most importantly, the Pennsylvania stand-your-ground statute does not establish any presumption of reasonableness.<sup>52</sup> The statute paradoxically establishes a duty to retreat in places outside the person’s home and place of work.<sup>53</sup> But then the statute carves out a large exception to the duty to retreat, and permits a person to stand his ground in instances when the person A) is outside his home or place of work, B) “has a right to be in the place where he was attacked,” C) “believes it is immediately necessary to do so to protect himself against death, serious bodily injury, kidnapping or sexual intercourse by force or threat,” or D) is attacked by a person who displays “a firearm or replica of a firearm,” or “any

other weapon readily or apparently capable of lethal use.”<sup>54</sup>

Thus, despite the fact that the Pennsylvania statute technically preserves the duty to retreat, it appears that it only applies in limited cases when a person is attacked outside his home or place of work, by a person who is not wielding “any other weapon readily or apparently capable of lethal use,” and permits a person to stand his ground in all other instances (provided that the person is not the initial aggressor, there is an imminent threat of serious bodily injury, and he has a right to be in the place where he was attacked).<sup>55</sup>

## 5. Effects of Stand-Your-Ground Laws on Crime Rates

Since stand-your-ground laws have only become widespread again in recent years, there is often a shortage of data that would enable the effects of stand-your-ground laws on crime to be accurately gauged.<sup>56</sup> Fortunately, there is sufficient information for this section to at least judge the effects of stand-your-ground laws in states that were among the earliest to re-establish them, such as Florida, Texas, and Pennsylvania. Although Virginia common law recognizes the right to stand-your-ground, Virginia

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> In the past few years, a couple widely-cited papers that analyze the effects of stand-your-ground laws on crime rates have been published. Chandler B. McClellan & Erdal Tekin, *Stand Your Ground Laws, Homicides, and Injuries*, NATIONAL BUREAU OF ECONOMIC RESEARCH, (Jun. 2012), <http://www.nber.org/papers/w18187.pdf>; Cheng Cheng & Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Castle Doctrine*, NATIONAL BUREAU OF ECONOMIC RESEARCH, (Jun. 2012), <http://www.nber.org/papers/w18134.pdf>. Section 6 of this article will address the discrepancies between the results of those papers, and the analysis in this section.

<sup>50</sup> TEX. PENAL CODE ANN. § 9.31 (West 2007).

<sup>51</sup> *Id.*

<sup>52</sup> 18 PA. STAT. AND CONS. STAT. ANN. § 505 (West 2011).

<sup>53</sup> *Id.*





nonetheless will not be included in this analysis because it would require reliance on data on crime from the late 1950s (the time when Virginia reestablished the right to stand-your-ground with the *Bailey* case)<sup>57</sup> which can prove to be both elusive and unreliable.

The statistical data from three of the most populous states that maintain stand-your-ground laws, namely, Florida, Texas, and Pennsylvania will be compared with those of three other populous states that do not maintain stand-your-ground laws, specifically, California, New York, and New Jersey. If the rate of change in the yearly incidents of violent crime in Florida, Texas, and Pennsylvania becomes increasingly negative after those states enacted their stand-your-ground laws, and during the same period California, New York, and New Jersey do not see a similar change, this will indicate that stand-your-ground laws tend to reduce violent crime rates. On the other hand, if the patterns in the rate of change in the yearly incidents of violent crime in California, New York, and New Jersey resemble those of Florida, Texas, and Pennsylvania, both before and after they enacted their stand-your-ground laws, this will indicate that their stand-your-ground laws had no effect on violent crime rates. Finally, if the rate of change in the yearly incidents of violent crime in Florida, Texas, and Pennsylvania becomes less negative after those states enacted their stand-your-ground laws, and during the same period California, New York, and New Jersey do not see a similar change, this will indicate that stand-your-ground laws tend to increase violent crime rates.

In the interest of identifying and isolating the aggregated effects of stand-your-ground laws from population changes or other undetermined crime-influencing factors, yearly

incidents of violent crime will be the statistic used in this analysis, as opposed to other more narrow and specific measures such as homicide rates, or broader measures such as total crime rates which also account for incidents of non-violent and property crime. The statistical data used in this analysis was retrieved directly from police department reports from each of the states analyzed. Depending on the state, the years surveyed range from 1993 to 2014.

### A. Florida

In 1994, there were 157,835 incidents of violent crime in Florida.<sup>58</sup> Since then, violent crime has consistently been dropping, so much so that in 2014, there were only 91,065 incidents of violent crime, as can be seen in *Figure 1* below.<sup>59</sup>

Although Florida enacted its stand-your-ground-law in 2005,<sup>60</sup> violent crime was already dropping during the period of 1994-2005 and continued to drop after.<sup>61</sup> Thus, it would seem that the introduction of Florida's stand-your-ground law had no measurable effect on the rate of violent crime. However, a slightly different conclusion can be drawn if one looks closely at the yearly rate of reduction in the incidents of violent crime before and after the enactment of the stand-your-ground law.

As can be seen in *Figure 1* below, over the period of 1994-2005, the average year-to-year rate of change in the number of incidents of violent crime was -1.99%.<sup>62</sup> However, over the period of 2006-2014, the average year-to-year

<sup>58</sup> *Violent Crime*, FLORIDA DEPARTMENT OF LAW ENFORCEMENT (2015), <https://www.fdle.state.fl.us/cms/FSAC/Crime-Trends/Violent-Crime.aspx>

<sup>59</sup> *Id.*

<sup>60</sup> West's F.S.A. § 776.012 (2005).

<sup>61</sup> FLORIDA DEPARTMENT OF LAW ENFORCEMENT, *supra* note 56.

<sup>62</sup> *Id.*

<sup>57</sup> *Bailey v. Commonwealth*, 104 S.E.2d 28 (Va. 1958).



rate of change in the number of incidents of violent crime was -2.69%.<sup>63</sup> Thus, after Florida introduced its stand-your-ground law in 2005, the year-to-year rate of change in the number of incidents of violent crime dropped even further by an average of just over -35%. This shows that the patterns in the rate of change in the yearly incidents of violent crime in Florida were increasingly negative after the enactment of the stand-your-ground law.

ly positive at +0.48%.<sup>68</sup> However, over the period of 2008-2014, the average year-to-year rate of change in the number of incidents of violent crime turned to -1.56%.<sup>69</sup> Thus, after Texas introduced its stand-your-ground law in 2007, the average year-to-year rate of change in the number of incidents of violent crime dropped by -325%.<sup>70</sup> This statistic shows that the patterns in the rate of change in the yearly incidents of violent crime in Texas were significantly more negative after the enactment of the stand-your-ground law.

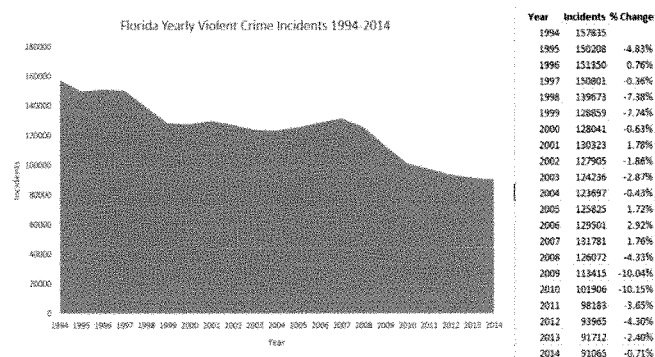


Figure 1

### B. Texas

Texas has seen a similar, but even more dramatic effect than Florida after adopting its stand-your-ground law in 2007.<sup>64</sup> In 1997, there were 117,087 incidents of violent crime in Texas.<sup>65</sup> The yearly number of incidents of violent crime actually rose to 122,192 by 2007, the year when Texas enacted its stand-your-ground law.<sup>66</sup> Thereafter, the yearly number of incidents of violent crime rapidly began to decrease; so much so that in 2014 there were only 108,848 incidents of violent crime, as can be seen in Figure 2 below.<sup>67</sup>

Over the period of 1997-2007, the average year-to-year rate of change in the number of incidents of violent crime in Texas was actual-

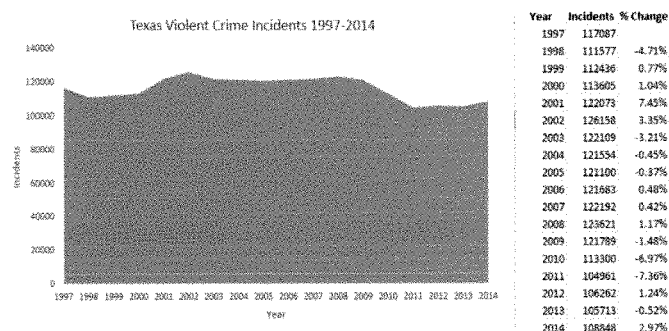


Figure 2

### C. Pennsylvania

Pennsylvania has likewise experienced quite a dramatic effect after enacting its stand-your-ground law in 2011.<sup>71</sup> In 1996, there were 49,549 incidents of violent crime.<sup>72</sup> By 2014, the yearly number of incidents of violent crime had dropped to only 40,250, as can be seen in Figure 3 below.<sup>73</sup>

<sup>63</sup> *Id.*

<sup>64</sup> *Crime in Texas Reports*, TEXAS DEPARTMENT OF PUBLIC SAFETY (2016), [https://dps.texas.gov/administration/crime\\_records/pages/crimestatistics.htm](https://dps.texas.gov/administration/crime_records/pages/crimestatistics.htm)

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> 18 PA.C STAT. AND CONS. STAT. ANN. § 505 (West 2011).

<sup>72</sup> *System.System.SystemCrime in Pennsylvania: Annual Uniform Crime Report*, PENNSYLVANIA STATE POLICE (2016/2016/2016/2016), <http://www.paucrs.pa.gov/UCR/Reporting/Annual/Pdf1999/1999AnnualReport.pdf>

<sup>73</sup> *Id. Id. Id. Crime in Pennsylvania: Annual Uniform Crime Report*, PENNSYLVANIA STATE POLICE (2016), <http://www.paucrs.pa.gov/UCR/Reporting/Annual/Annual-Frames.asp?year=2014>.



Between the years 1996-2011, the average year-to-year rate of change in the number of incidents of violent crime in Pennsylvania was only a mere -0.41%.<sup>74</sup> However, in the period of 2012-14, the average year-to-year rate of change in the number of incidents of violent crime dropped significantly to -4.36%.<sup>75</sup> Thus, after Pennsylvania adopted its stand-your-ground law in 2011, the average year-to-year rate of change in the number of incidents of violent crime dropped an astounding -1063%.<sup>76</sup> These results indicate, that as was seen in both Florida and Texas, the patterns in the rate of change in the yearly number of incidents of violent crime in Pennsylvania were remarkably more negative after the enactment of the stand-your-ground statute.

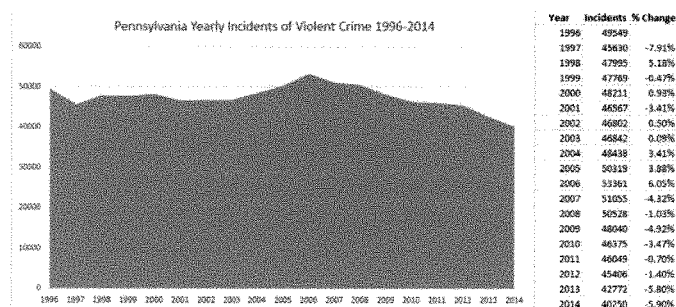


Figure 3

#### D. California

Unlike Florida and Texas, California has not yet joined the rapidly growing group of states that have enacted stand-your-ground laws. In order to compare the crime statistics of California with Florida and Texas, this section will attempt to identify any change in the trend in the yearly change of violent crime incident rates before and after 2005 (the year when

Florida adopted its stand-your-ground law). Interestingly, California's violent crime statistics show a different trend from Florida and Texas. In 1993, there were 336,100 incidents of violent crime in California.<sup>77</sup> By 2014, the number of incidents of violent crime had dropped to 151,425, as can be seen in *Figure 4* below.<sup>78</sup>

Although, the yearly number of incidents of violent crime was dropping before 2005, and continued to drop after, in contrast to Florida and Texas, the rate at which the yearly number of incidents of violent crime decreased slowed significantly after 2005. Specifically, from 1993 to 2005 the average rate of change in the yearly number of incidents of violent crime was -4.58%.<sup>79</sup> However, from 2006 to 2014 the average yearly rate of change in the number of incidents of violent crime was only -2.41%.<sup>80</sup>

Therefore, the rate of reduction in the yearly number of incidents of violent crime California slowed down, while Florida saw a higher rate of reduction in the yearly number of incidents of violent crime during the same time period after enacting a stand-your-ground law. These results serve as a good indicator that when stand-your-ground laws are present in a U.S. state, they tend to reduce the yearly incidents of violent crime.

<sup>74</sup> *Id. Id. Id. Pennsylvania Uniform Crime Reporting System*, PENNSYLVANIA STATE POLICE (2016), <http://www.pauers.pa.gov/UCR/Reporting/Annual/AnnualSumArrestUI.asp>.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Crime in California*, CALIFORNIA OFFICE OF THE ATTORNEY GENERAL (2016), <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd14/cd14.pdf>

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

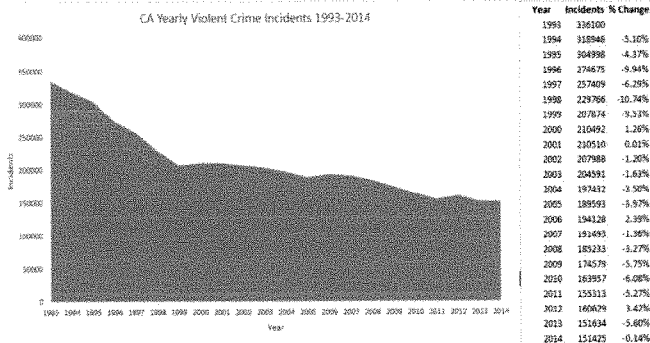


Figure 4

### E. New York

Like California, New York has not yet enacted a statute recognizing the right to stand-your-ground. As with the previous section, this section will attempt to identify any trends in the yearly change of the number of incidents of violent crime before and after 2005 (the year when Florida adopted its stand-your-ground law). New York's statistics on yearly incidents of violent crime show a similar trend to California. In 1997, there were 124,913 incidents of violent crime in New York.<sup>81</sup> By 2014, that number had dropped to 72,338, as can be seen in Figure 5 below.<sup>82</sup>

As with California, the yearly number of incidents of violent crime was dropping before 2005 and continued to drop after, yet the rate at which the yearly number of incidents of violent crime decreased, slowed after 2005.<sup>83</sup> Specifically, from 1997 to 2005, the average rate of change in the yearly number of incidents of

violent crime was -4.59%.<sup>84</sup> However, from 2006 to 2014 the average yearly rate of change in the number of incidents of violent crime was a mere -1.80%, as can be seen in Figure 5 below.<sup>85</sup>

As was seen in California, over the same time period after Florida enacted its stand-your-ground law, the rate of reduction in the yearly number of incidents of violent crime in New York slowed significantly, while Florida's rate of reduction in the yearly number of incidents of violent crime sped up. These results further confirm that stand-your-ground laws tend to have a negative effect on the yearly incidents of violent crime.

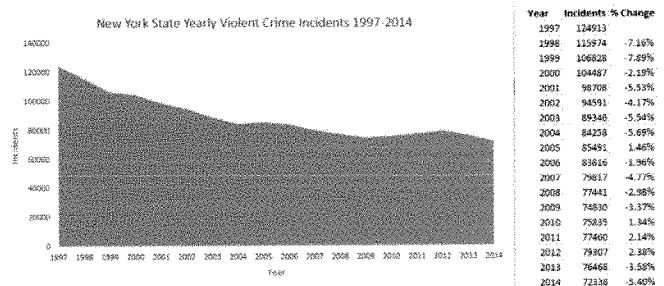


Figure 5

### F. New Jersey

As with California and New York, New Jersey has also not yet enacted a statute recognizing the right to stand-your-ground. Again, as with the previous two sections, this section will attempt to identify any trend in the rate of change of violent crime incident rates in New Jersey before and after 2005 (the year when Florida adopted its stand-your-ground law). The statistics on the yearly number of incidents of violent crime in New Jersey show a similar trend to both California and New York. In 1995, there were 47,577 incidents of violent crime in

<sup>81</sup> *Crime in New York State: 2006 Final Data*, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES (2016), <http://www.criminaljustice.ny.gov/pio/annualreport/nys-crime-report-2006.pdf>.

<sup>82</sup> *Id. Id. Id. Crime in New York State: 2015 Final Data*, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES (2016), <http://www.criminaljustice.ny.gov/crimnet/ojsa/NYSCrimeReport2015.pdf>.

<sup>83</sup> *Id. Id. Id. Crime in New York State*, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES (2016), <http://www.criminaljustice.ny.gov/crimnet/pubs.htm>.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*



New Jersey.<sup>86</sup> By 2013, that number had fallen to 25,452, as can be seen in *Figure 6* below.<sup>87</sup>

As was seen in both California and New York, the yearly number of incidents of violent crime in New Jersey was dropping before 2005 and continued to drop after, yet the rate at which the yearly number of incidents of violent crime decreased, slowed after 2005.<sup>88</sup> Specifically, from 1995 to 2005, the average year-to-year rate of change in the number of incidents of violent crime was -4.14%.<sup>89</sup> Yet, from 2006 to 2013, the average year-to-year rate of change in the number of incidents of violent crime had slowed significantly to a mere -2.37%.<sup>90</sup>

As was seen in both California and New York, over the same time period after Florida enacted its stand-your-ground law, the rate of reduction in the yearly number of incidents of violent crime in New Jersey slowed, while Florida's rate of reduction in the yearly number of incident of violent crime sped up. These results again confirm that stand-your-ground laws tend to have a negative effect on the yearly incidents of violent crime.

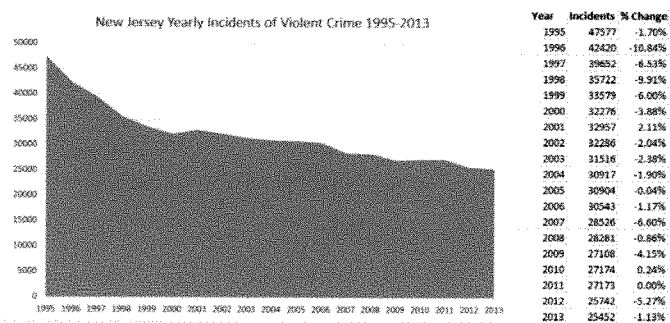


Figure 6

<sup>86</sup> *Uniform Crime Reporting*, NEW JERSEY STATE POLICE (2016), [http://www.njsp.org/info/ucr1995/pdf/1995\\_uniform\\_crime\\_report.pdf](http://www.njsp.org/info/ucr1995/pdf/1995_uniform_crime_report.pdf)

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

## 6. Addressing Discrepancies with Other Reports and Studies

The main argument raised in opposition to stand-your-ground laws is that they increase homicide rates, or crime rates, by lowering the cost to individuals of retaliating to an altercation by the use of deadly force. This section will address those criticisms and explain why this paper has provided different results than other reports and studies on the effects of stand-your-ground laws.

Many critics of stand-your-ground laws frequently argue that states such as Florida and Texas have experienced an increase in homicides after enacting stand-your-ground laws.<sup>91</sup> However, if one pays close attention to the actual statistics that these critics cite, it is in fact only justifiable homicides that have increased in Florida and Texas after the enactment of their stand-your-ground laws in 2005 and 2007, respectively. This amounts to no valid criticism of the effects of stand-your-ground laws because justifiable homicide is in fact, “[a] killing without evil or criminal intent, for which there is no blame.”<sup>92</sup> In fact, one might argue that an increase in justifiable homicides after enactment of a stand-your-ground law is proof of the law’s effectiveness.

A small number of other studies analyzing the effects of stand-your-ground laws on crime rates have been conducted in the past few years. The two most high profile of those studies were conducted by the economists McClellan &

<sup>91</sup> See, MAYORS AGAINST ILLEGAL GUNS, *supra* note 1.

<sup>92</sup> *Justifiable Homicide*, The Cornell University Law School, [https://www.law.cornell.edu/wex/justifiable\\_homicide](https://www.law.cornell.edu/wex/justifiable_homicide).



Tekin,<sup>93</sup> and Hoekstra & Cheng.<sup>94</sup> In stark contrast to this paper's findings, those studies unanimously claim that stand-your-ground laws have in fact increased crime rates. In fact, the ABA which last year released its highly publicized report titled, "Task Force on Stand Your Ground Laws,"<sup>95</sup> primarily relied on the previously mentioned studies as a statistical backing for its argument that stand-your-ground laws should be repealed because they increase crime rates.

When comparing the crime data between stand-your-ground, and duty to retreat states, McClellan & Tekin find that the introduction of stand-your-ground laws has precipitated a 6.8% increase in the homicide rate.<sup>96</sup> Although they admit that at least a part of that 6.8% is attributable to an increase in justifiable homicides, they believe that "it cannot be argued in that case that the SYG laws are saving the lives of innocent people as these individuals would not have been killed in the first place."<sup>97</sup>

Similarly, Cheng & Hoekstra found that states that have adopted stand-your-ground laws have experienced an 8% increase in their homicide rate, compared to duty to retreat states.<sup>98</sup> They also admitted, that anywhere between half and all of those additional homicides were in fact, justifiable homicides.<sup>99</sup> In

addition, they found that stand-your-ground laws have had a very slight deterrent effect.<sup>100</sup> Finally, they posit that society must "weigh the increased protections given to victims against the net increase in violent deaths that result."<sup>101</sup>

There are a few reasons that could account for this discrepancy in the results found in this paper and the two studies just summarized, all of which relate to the source and quantity of data surveyed. Firstly, the two studies both concentrated primarily on the effects of stand-your-ground laws on homicide rates. Secondly, the data used in the studies were from different sources; McClellan and Tekin relied on data from the U.S. Vital Statistics,<sup>102</sup> Hoekstra and Cheng used data from the FBI's Uniform Crime Reports,<sup>103</sup> whereas this paper relied on data directly reported from state police departments. Thirdly, the two studies relied on data covering a much smaller timeframe; both of the articles focused on a 10-year span from 2000-2010,<sup>104</sup> whereas this paper focused on 17 to 21-year spans ranging from 1993-2014. This is very significant because an increasing number of states have adopted stand-your-ground laws since 2010, and states with stand-your-ground laws have experienced increasingly rapid reductions in their crime rates since 2010. Because of the short time-span the McClellan & Tekin and Hoekstra & Cheng studies concentrated on, the data they analyzed and drew their conclusions from did not reflect the recent experiences of states with stand-your-ground laws.

<sup>93</sup> Chandler B. McClellan & Erdal Tekin, *Stand Your Ground Laws, Homicides, and Injuries*, NATIONAL BUREAU OF ECONOMIC RESEARCH, (Jun. 2012), <http://www.nber.org/papers/w18187.pdf>.

<sup>94</sup> Cheng Cheng & Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Castle Doctrine*, NATIONAL BUREAU OF ECONOMIC RESEARCH, (Jun. 2012), <http://www.nber.org/papers/w18134.pdf>.

<sup>95</sup> *National Task Force on Stand Your Ground Laws*, AMERICAN BAR ASSOCIATION, (Sept. 2015), [http://www.americanbar.org/content/dam/aba/images/diversity/SYG\\_Report\\_Book.pdf](http://www.americanbar.org/content/dam/aba/images/diversity/SYG_Report_Book.pdf).

<sup>96</sup> McClellan & Tekin, *supra* note 92, at 20.

<sup>97</sup> *Id.* at 24.

<sup>98</sup> Cheng & Hoekstra, *supra* note 93, at 4.

<sup>99</sup> *Id.* at 26.

<sup>100</sup> *Id.* at 17.

<sup>101</sup> *Id.* at 28.

<sup>102</sup> McClellan & Tekin, *supra* note 92, at 7.

<sup>103</sup> Cheng & Hoekstra, *supra* note 93, at 4.

<sup>104</sup> McClellan & Tekin, *supra* note 92, at 2; Cheng & Hoekstra, *supra* note 93, at 12.



## 7. Conclusion

The debate concerning stand-your-ground laws, as with many other politically charged policies, is often inundated by literature that seeks to confirm the public perception of stand-your-ground laws to established political narratives. This paper has attempted to show that there exists significant evidence indicating that stand-your-ground laws have not affected crime rates in the way much of the literature on the topic believes. Contrary to many claims, there is a centuries-long historical precedence for stand-your-ground laws, and furthermore, stand-your-ground laws have helped reduce crime rates in many states across the United States.

The final remaining question that this paper would like to touch upon is that of whether there is sufficient justification for the continued existence of stand-your-ground laws. From a purely statistical point of view, the fact that stand-your-ground laws have a small negative effect on crime rates is reason enough to maintain them. From a historical point of view, the centuries-long prominence of the right to stand one's ground in Anglo-American common law further justifies the continued maintenance of such laws. And lastly, stand-your-ground laws should be maintained because they exemplify a strong appreciation for our nation's founding principles of individual liberty and self-determination, for, no person can be truly considered free unless he is vested with the right to defend himself.





## ABOUT THE AUTHOR



E. Dimitri Hasandras is currently a third-year law student at George Mason University's Antonin Scalia Law School. Building on a strong foundational education in economics in college, Mr. Hasandras has always been drawn to various issues of policy. This article was conceived as a result of his passionate support for the Second Amendment, and his desire to provide an element of objectivity to the polarized discourse on stand-your-ground laws. In the future, Mr. Hasandras seeks to pursue a public-service career in regulatory, telecommunications, or antitrust law.